

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA**

KELLY MILLIGAN,
ON BEHALF OF HIMSELF AND
ALL OTHERS SIMILARLY SITUATED,

Plaintiff,

vs.

MERRILL LYNCH, PIERCE, FENNER &
SMITH INC., BANK OF AMERICA CORP.,
and JOHN/JANE DOE 1, THE SENIOR VICE
PRESIDENT–HUMAN RESOURCES
GLOBAL BANKING AND GLOBAL
WEALTH AND INVESTMENT
MANAGEMENT ADMINISTRATION AT
BANK OF AMERICA CORP.,

Defendants.

Case No. 3:24-cv-00440-KDB-DCK

Judge Kenneth D. Bell
Magistrate Judge David Keesler

CLASS ACTION

**JOINT MOTION REGARDING BRIEFING SCHEDULE
FOR DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**

Plaintiff Kelly Milligan (“Plaintiff”) and Defendants Merrill Lynch, Pierce, Fenner & Smith Inc. (“Merrill Lynch”) and Bank of America Corp. (“Bank of America”) (together, “Defendants”), by and through their attorneys, respectfully move this Court to vacate the current October 15, 2024, deadline for Plaintiff to oppose Defendants’ Motion for Summary Judgment [ECF No. 41] (the “MSJ”). In place of that deadline, the parties propose that they be allowed until October 11, 2024, to meet and confer regarding any additional focused discovery that Plaintiff believes he needs to respond to Defendants’ MSJ, and to file with the Court a proposed schedule for any such discovery, for Plaintiff to submit his opposition to the MSJ, and for Defendants to submit any reply. In support of this Motion, the parties state as follows:

1. This case asserts claims under ERISA. However, the parties dispute whether ERISA applies to the WealthChoice Contingent Award Plan at issue in this matter. *See generally* Complaint [ECF No. 1]; Defendants' MSJ.

2. Defendants filed their MSJ on September 30, 2024. Under the Local Rules and the parties' current pretrial order, Plaintiffs' opposition would ordinarily be due on October 15, 2024. *See* L.R. 7.1(e); Pretrial Order and Case Management Plan at II.C. [ECF 36].

3. Defendants' MSJ includes assertions of fact and relies on three declarations and 28 documentary exhibits. *See generally* [ECF No. 41] and associated exhibits.

4. Plaintiff maintains that he needs additional time to conduct targeted discovery on certain factual assertions in Defendants' MSJ before he can file a response. Defendants do not believe any such discovery is necessary to respond to the MSJ, but rather that the legal arguments set forth in the MSJ are properly based on undisputed facts established in the materials upon which the MSJ relies, all of which have been produced to Plaintiff.

5. However, Plaintiff and Defendants will meet and confer to discuss the discovery that Plaintiff believes he needs to respond to the MSJ. The parties will then submit a new proposed scheduling order no later than Friday, October 11, 2024, with proposed deadlines for any such discovery, Plaintiff's response to the MSJ, and Defendants' reply brief.

6. This Motion is timely, as it is filed before the current deadline for Plaintiff to respond to the MSJ.

7. This Motion is filed for good cause and not for delay or any other improper purpose.

8. Pursuant to Local Civil Rule 7.1(b), the parties' counsel conferred regarding the relief sought in this Motion and submit this Motion as a joint filing.

Dated: October 7, 2024

Respectfully submitted,

By: /s/ Matthew A. Russell

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I, John D. Hurst, an attorney, hereby certify that on October 7, 2024, I caused a copy of the foregoing to be filed through the Court's CM/ECF Electronic Filing System, which will transmit notice of such filing to all counsel of record.

/s/ John D. Hurst